

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Biennial Review 2002 Comments)	WC Docket No. 02-313
)	
)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to comments filed in the above captioned proceeding.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

OPASTCO agrees with commenters who have urged the Commission to amend its rules so as to allow all carriers not yet capable of local number portability (LNP) to recover their legitimate ongoing LNP-related costs, regardless of whether or not such carriers participate in an Extended Area Service (EAS) calling plan. Furthermore, the

¹ *The Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireline Competition Bureau*, WC Docket No. 02-313, Public Notice, FCC 02-267 (rel. Sept. 26, 2002). (Public Notice)

Commission must reconsider its decision to prohibit non-LNP capable carriers from recovering the ongoing network costs associated with LNP through access charges, as this is inconsistent with the rules established for LNP-capable carriers.

Commenters in this proceeding also convincingly demonstrate that the Commission must make certain changes to its rules associated with the data filing requirements stipulated for the calculation of Interstate Common Line Support (ICLS). In recognition of the Commission's own determination that ICLS filing requirements should be efficient, accurate, and minimize the administrative burden on small, rural carriers, it is essential that the Commission: 1) specify that only the six data items actually needed for the computation of ICLS must be provided by eligible Rate-of-Return (ROR) carriers; 2) authorize the National Exchange Carrier Association (NECA) to make this submission on behalf of those ROR incumbent local exchange carriers (ILECs) participating in the NECA pools; and 3) change the deadline for the submission of the data required for ICLS true-ups to December 31st, so that ROR carriers will have sufficient time to complete annual cost studies.

II. PART 52 – NUMBERING:

The Commission must provide all non-LNP capable carriers with a means to recover their ongoing LNP-related costs

Commenting parties correctly state that the Commission's rules continue to deny the majority of carriers that are not yet LNP-capable a means to recover the ongoing LNP costs that all carriers incur.² In its Memorandum Opinion and Order on Reconsideration,³ the Commission provided a means of cost recovery only to a narrow subset of non-LNP

² NECA, pp. 14-16; NTCA, p. 5; USTA, pp. 12-13.

³ *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (Order on Reconsideration).

capable carriers, specifically those which participate in an EAS calling plan with an adjacent LNP-capable carrier.⁴ However, non-LNP capable carriers without an EAS agreement continue to incur LNP-related costs, yet still have no means to recover them.⁵

Like all non-LNP capable carriers, those without an EAS agreement must contribute to cover the costs of the LNP administrator. They are also often responsible for the query costs that result from intraLATA toll calls that originate on their networks and terminate in a neighboring area where LNP has been implemented. Specifically, if the non-LNP capable carrier is the caller's intraLATA toll provider, then it is also the "N-1" carrier and therefore responsible for the cost of the database query, despite the lack of an EAS agreement. All non-LNP capable carriers are entitled to recover their legitimate and ongoing LNP-related costs. Therefore, it is critical that the Commission revise its rules to permit cost recovery for all non-LNP capable carriers, not just those that participate in an EAS calling plan.

In addition, the Order on Reconsideration continues to prohibit non-LNP capable carriers from recovering their ongoing network costs associated with LNP through the normal separations and access charge process.⁶ The Order on Reconsideration does not explain why such a prohibition is appropriate for non-LNP capable carriers, while in contrast, LNP-capable carriers will be permitted to recover the same ongoing costs through "existing mechanisms" once the five-year period for end-user charge recovery

⁴ *Ibid.*, paras. 51-56.

⁵ The Final Regulatory Flexibility Certification is faulty because the Commission failed to consider the costs incurred by the majority of non-LNP capable small ILECs which lack EAS agreements. *Id.*, paras. 120-122.

⁶ *Id.*, para. 54.

expires.⁷ Absent a rational justification for such disparate and discriminatory treatment of non-LNP capable carriers, this prohibition should be rescinded.

III. PART 54 – UNIVERSAL SERVICE:

The Commission should amend its rules related to the ICLS data filing requirements, in order to minimize the administrative burden on small ROR ILECs

Several commenters have correctly indicated that it is essential for the Commission to clarify its rules relating to the data filing requirements necessary for ROR ILECs to receive ICLS.⁸ To begin with, the Commission should permanently specify that ROR carriers must only submit those six data items noted in the First Order on Reconsideration in the Multi-Association Group (MAG) proceeding,⁹ in order to comply with the data filing requirements for ICLS funding. In the Second Report and Order in the MAG proceeding, the Commission stated that:

[M]any rate-of-return carriers are small, rural carriers that are particularly burdened by additional reporting requirements. Accordingly, we intend to limit as much as possible the administrative burdens associated with the new Interstate Common Line Support mechanism, while promoting accurate and efficient distribution of support.¹⁰

⁷ *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11777, para. 144 (1998).

⁸ NECA, pp. 5-10; NTCA, pp. 6-8; USTA, pp. 16-17.

⁹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635, 5640, para. 15 (2002).

¹⁰ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, Report and Order, *Presubscribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Report and Order, 16 FCC Rcd 19613, 19681, para. 160 (2001).

Permanently specifying the six data items in the rules will provide the Universal Service Administrative Company (USAC) with the actual data necessary to devise accurate, company-specific ICLS allocations, without imposing the undue administrative burden on small ROR ILECs that the Commission seeks to avoid.¹¹

Furthermore, NECA, as the tariff filing agent for most ROR ILECs, presently collects the six data items needed to calculate ICLS as a consequence of its Part 69 tariff filing duties. As such, it would be appropriate for the Commission to designate NECA to submit this data to USAC for the purposes of determining ICLS funding. By specifying that NECA may complete this task on behalf of those ROR ILECs participating in the pooling process, the Commission would minimize the administrative burden placed upon these carriers. It would also ensure data consistency and integrity, as NECA already collects and/or calculates each of the six data items for purposes of filing access tariffs.

Finally, the Commission should alter its deadline for the submission of actual ICLS data needed for true-up purposes, from July 31st to December 31st of each year. Commenters have indicated that the present deadline does not provide those ROR carriers

¹¹ In earlier comments regarding ICLS data collection procedures, OPASTCO and other LEC industry associations noted that USAC considered using data collection forms that would have required small ROR ILECs to supply over 1,000 individual data items, rather than the six items actually needed for the calculation of ICLS. The Associations estimated that, were such an approach mandated for future ICLS filings, ROR carriers would be required to devote well over 100,000 hours per year to complete this task. Certainly, a filing of such magnitude would impose an undue administrative burden on small ROR ILECs. See, NRTA, NTCA, OPASTCO, USTA, and Western Alliance Joint Comments, In the Matter of *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Public Information Collection*, OMB Control No. 3060-0972, pp. 9-12 (fil. May 17, 2002).

that operate on a cost basis with enough time to complete their annual cost studies.¹²

Were the Commission to extend its deadline, these ROR ILECs would be provided with a reasonable opportunity to complete costs studies, so that the most timely and accurate data may be submitted to USAC.

¹² NECA, pp. 6-7; NTCA, p. 8; USTA, pp. 16-17.

IV. CONCLUSION

For the reasons stated above, the Commission must amend its rules to allow all non-LNP capable carriers, regardless of whether or not they participate in EAS calling plans, to recover the ongoing costs associated with LNP. It should also allow non-LNP capable carriers to recover their ongoing LNP-related costs through access charges, consistent with the rules established for LNP-capable carriers. Furthermore, the Commission must revise the rules associated with the calculation of ICLS to ensure that the data collection process does not unduly burden small ROR ILECs, yet still provides USAC with the most accurate and up-to-date information possible.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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November 4, 2002

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 4th day of November, 2002, to those listed on the attached list.

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